

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	
<b>M. REDA MOSSA-BASHA</b>	)	<b>TC02067001</b>
<b>d/b/a SHELL PETROLEUM</b>	)	
<b>1005 N. SHADELAND AVE.</b>	)	
<b>INDIANAPOLIS, INDIANA 46219</b>	)	
	)	
<b>Certificate Holder.</b>	)	

M. Reda Mossa-Basha, d/b/a Shell Petroleum, 1005 N. Shadeland Ave., Indianapolis, Indiana 46219, is the holder of an Alcohol and Tobacco Commission Tobacco Certificate Number TC02067001 (the “Certificate Holder”). On or about April 28, 2008, the Certificate Holder was cited by the Indiana State Excise Police for violating IC 35-46-1-10 and IC 35-46-1-10.2. The Certificate Holder contested the alleged violations and the matter was set for hearing on August 18, 2008. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. Patrick M. O’Brien represented the Certificate Holder. The Commission was represented by its Prosecutor, Jennifer D. Drewry. The Hearing judge took judicial notice of the entire contents of the file related to Tobacco Certificate Number TC02067001. Having been duly advised of the facts and law at issue, the Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

1. On April 28, 2008, the Certificate Holder was cited by the Indiana State Excise Police for allegedly violating IC 35-46-1-10 (sale or distribution of tobacco to

minors) and IC 35-46-1-10.2 (retail establishment's sale or distribution of tobacco to minors). On that same day, Messaoud Aitsouki, an employee of the Certificate Holder, was also cited for the violation of the same provisions of the Indiana Code.

2. Mr. Aitsouki did not contest the alleged violations. Rather, Mr. Aitsouki paid One Hundred Dollars (\$100) of civil penalty to the Commission.

3. On April 28, 2008, The Tobacco Retailer Inspection Program Officer and Mathew Socks, an underage agent of the Tobacco Retailer Inspection Program ("TRIP"), purchased a tobacco product from Mr. Aitsouki, under the direction of the Indiana State Excise Police. (Testimony of Major Poindexter; Testimony of Mr. Aitsouki; ATC File)

4. Mr. Aitsouki asked for identification of Mathew Socks after the completion of tobacco sale. (Testimony of Mr. Aitsouki)

5. TRIP is designed to monitor the effectiveness of tobacco retailer compliance by conducting random unannounced inspections of retailer stores. (Testimony of Major Poindexter)

6. On March 19, 2008, the Certificate Holder was cited for violating IC 35-46-1-10 and IC 35-46-1-10.2, the same provisions of the Indiana Code in question. (ATC File). The Certificate Holder did not contest the alleged violations and paid civil penalty to the Commission. (ATC File; ATC Hearing)

7. Mr. Aitsouki is not properly trained on how to handle underage customers at the Certificate Holder's store. (Testimony of Mr. Aitsouki)

8. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

### **CONCLUSIONS OF LAW**

1. In Indiana, a retailer establishment that sells or distributes tobacco product to a person less than eighteen (18) years of age commits a Class C infraction. IC 35-46-1-10.2(a). A civil judgment for this infraction is up to Four Hundred Dollars (\$400) if the retail establishment has had one (1) citation issued for a violation of this section in the previous one hundred eighty (180) days. *Id.*

2. The Certificate Holder must exercise due diligence in the supervision and training of his employees in the handling and sale of tobacco products. IC 7.1-3-18.5-9.

3. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

WHEREFORE, the Hearing Judge determines from a presentation of the evidence that the Commission has proven that the Certificate Holder, M. Reda Mossa-Basha, d/b/a Shell Petroleum, 1005 N. Shadeland Ave., Indianapolis, Indiana 46219, Tobacco Certificate Number TC02067001, has violated the following statutes or regulations of the Commission:

1. Retail Establishment's Sale of Tobacco to Minors, in violation of IC 35-46-1-10.2; and
2. Lack of due diligence in the supervision and training of certificate holder's employee, IC 7.1-3-18.5-9.

WHEREFORE, the following disposition is hereby recommended to the Commission:

1. Fine in the amount of One Hundred Dollars (\$100).
2. The certificate holder shall provide training program for his employees that includes at least the following topics:

- (a) Laws governing the sale of tobacco products;
- (b) Methods of recognizing and handling customers who are less than eighteen (18) years of age; and
- (c) Procedures for proper examination of identification cards to verify that customers are under eighteen (18) years of age.

DATED: August 18, 2008

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U-Jung Choe, Hearing Judge